

SECOND REGULAR SESSION

SENATE BILL NO. 685

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Pre-filed December 1, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

3295S.011

AN ACT

To repeal section 375.1255, RSMo, and to enact in lieu thereof two new sections relating to the financial condition of certain insurance companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 375.1255, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 375.539 and 375.1255, to read as
3 follows:

**375.539. 1. The director of the department of insurance, financial
2 institutions and professional registration may deem an insurance
3 company to be in such financial condition that its further transaction
4 of business would be hazardous to policyholders, creditors, and the
5 public, if such company is a property or casualty insurer, or both a
6 property and casualty insurer, which has in force any policy with any
7 single net retained risk larger than ten percent of that company's
8 capital and surplus as of the December thirty-first next preceding.**

**9 2. The following standards, either singly or a combination of two
10 or more, may be considered by the director to determine whether the
11 continued operation of any insurer transacting an insurance business
12 in this state might be deemed to be hazardous to its policyholders,
13 creditors, or the general public:**

**14 (1) Adverse findings reported in financial condition and market
15 conduct examination reports, audit reports, and actuarial opinions,
16 reports, or summaries;**

**17 (2) The National Association of Insurance Commissioners
18 Insurance Regulatory Information System and its other financial**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 analysis solvency tools and reports;

20 (3) Whether the insurer has made adequate provision, according
21 to presently accepted actuarial standards of practice, for the
22 anticipated cash flows required by the contractual obligations and
23 related expenses of the insurer, when considered in light of the assets
24 held by the insurer with respect to such reserves and related actuarial
25 items including, but not limited to, the investment earnings on such
26 assets, and the considerations anticipated to be received and retained
27 under such policies and contracts;

28 (4) The ability of an assuming reinsurer to perform and whether
29 the insurer's reinsurance program provides sufficient protection for the
30 insurer's remaining surplus after taking into account the insurer's cash
31 flow and the classes of business written as well as the financial
32 condition of the assuming reinsurer;

33 (5) Whether the insurer's operating loss in the last twelve-month
34 period or any shorter period of time, including but not limited to net
35 capital gain or loss, change in non-admitted assets, and cash dividends
36 paid to shareholders, is greater than fifty percent of the insurer's
37 remaining surplus as regards policyholders in excess of the minimum
38 required;

39 (6) Whether the insurer's operating loss in the last twelve-month
40 period or any shorter period of time, excluding net capital gains, is
41 greater than twenty percent of the insurer's remaining surplus as
42 regards policyholders in excess of the minimum required;

43 (7) Whether a reinsurer, obligor, or any entity within the
44 insurer's insurance holding company system, is insolvent, threatened
45 with insolvency or delinquent in payment of its monetary or other
46 obligations, and which in the opinion of the commissioner may affect
47 the solvency of the insurer;

48 (8) Contingent liabilities, pledges, or guaranties which either
49 individually or collectively involve a total amount which in the opinion
50 of the commissioner may affect the solvency of the insurer;

51 (9) Whether any "controlling person" of an insurer is delinquent
52 in the transmitting to, or payment of, net premiums to the insurer;

53 (10) The age and collectibility of receivables;

54 (11) Whether the management of an insurer, including officers,
55 directors, or any other person who directly or indirectly controls the

56 operation of the insurer, fails to possess and demonstrate the
57 competence, fitness, and reputation deemed necessary to serve the
58 insurer in such position;

59 (12) Whether management of an insurer has failed to respond to
60 inquiries relative to the condition of the insurer or has furnished false
61 and misleading information concerning an inquiry;

62 (13) Whether the insurer has failed to meet financial and holding
63 company filing requirements in the absence of a reason satisfactory to
64 the commissioner;

65 (14) Whether management of an insurer either has filed any false
66 or misleading sworn financial statement, or has released false or
67 misleading financial statement to lending institutions or to the general
68 public, or has made a false or misleading entry, or has omitted an entry
69 of material amount in the books of the insurer;

70 (15) Whether the insurer has grown so rapidly and to such an
71 extent that it lacks adequate financial and administrative capacity to
72 meet its obligations in a timely manner;

73 (16) Whether the insurer has experienced or will experience in
74 the foreseeable future cash flow or liquidity problems;

75 (17) Whether management has established reserves that do not
76 comply with minimum standards established by state insurance laws,
77 regulations, statutory accounting standards, sound actuarial principles
78 and standards of practice;

79 (18) Whether management persistently engages in material under
80 reserving that results in adverse development;

81 (19) Whether transactions among affiliates, subsidiaries, or
82 controlling persons for which the insurer receives assets or capital
83 gains, or both, do not provide sufficient value, liquidity, or diversity to
84 assure the insurer's ability to meet its outstanding obligations as they
85 mature;

86 (20) Any other finding determined by the commissioner to be
87 hazardous to the insurer's policyholders, creditors, or general public.

88 3. For the purposes of making a determination of an insurer's
89 financial condition under this section, the director may:

90 (1) Disregard any credit or amount receivable resulting from
91 transactions with a reinsurer that is insolvent, impaired, or otherwise
92 subject to a delinquency proceeding;

93 (2) Make appropriate adjustments including disallowance to
94 asset values attributable to investments in or transactions with parents,
95 subsidiaries, or affiliates consistent with the NAIC Accounting Policies
96 and Procedures Manual, state laws and regulations;

97 (3) Refuse to recognize the stated value of accounts receivable
98 if the ability to collect receivables is highly speculative in view of the
99 age of the account or the financial condition of the debtor;

100 (4) Increase the insurer's liability in an amount equal to any
101 contingent liability, pledge, or guarantee not otherwise included if
102 there is a substantial risk that the insurer will be called upon to meet
103 the obligation undertaken within the next twelve-month period.

104 4. If the director determines that the continued operation of the
105 insurer licensed to transact business in this state may be hazardous to
106 its policyholders, creditors, or the general public, then the director
107 may, to the extent authorized by law and in accordance with any
108 procedures required by law, issue an order requiring the insurer to:

109 (1) Reduce the total amount of present and potential liability for
110 policy benefits by reinsurance;

111 (2) Reduce, suspend, or limit the volume of business being
112 accepted or renewed;

113 (3) Reduce general insurance and commission expenses by
114 specified methods;

115 (4) Increase the insurer's capital and surplus;

116 (5) Suspend or limit the declaration and payment of dividend by
117 an insurer to its stockholders or to its policyholders;

118 (6) File reports in a form acceptable to the director concerning
119 the market value of an insurer's assets;

120 (7) Limit or withdraw from certain investments or discontinue
121 certain investment practices to the extent the director deems
122 necessary;

123 (8) Document the adequacy of premium rates in relation to the
124 risks insured;

125 (9) File, in addition to regular annual statements, interim
126 financial reports on the form adopted by the National Association of
127 Insurance Commissioners or in such format as promulgated by the
128 director;

129 (10) Correct corporate governance practice deficiencies, and

130 **adopt and utilize governance practices acceptable to the director;**

131 **(11) Provide a business plan to the director in order to continue**
132 **to transact business in the state;**

133 **(12) Notwithstanding any other provision of law limiting the**
134 **frequency or amount of premium rate adjustments, adjust rates for any**
135 **non-life insurance product written by the insurer that the director**
136 **considers necessary to improve the financial condition of the insurer.**

137 **5. An insurer subject to an order under subsection 4 of this**
138 **section may request a hearing to review that order. The notice of**
139 **hearing shall be served upon the insurer pursuant to section**
140 **536.067. The notice of hearing shall state the time and place of hearing**
141 **and the conduct, condition, or ground upon which the director based**
142 **the order. Unless mutually agreed between the director and the**
143 **insurer, the hearing shall occur not less than ten days nor more than**
144 **thirty days after notice is served and shall be either in Cole County or**
145 **in some other place convenient to the parties designated by the**
146 **director. The director shall hold all hearings under this subsection**
147 **privately, unless the insurer requests a public hearing, in which case**
148 **the hearing shall be public.**

149 **6. This section shall not be interpreted to limit the powers**
150 **granted the director by any laws or parts of laws of this state, nor shall**
151 **this section be interpreted to supercede any laws or parts of laws of**
152 **this state, except that if the insurer is a foreign insurer, the director's**
153 **order under subsection 4 of this section may be limited to the extent**
154 **expressly provided by any laws or parts of laws of this state.**

375.1255. 1. "Company action level event" means with respect to any
2 insurer, any of the following events:

3 (1) The filing of an RBC report by the insurer which indicates that:

4 (a) The insurer's total adjusted capital is greater than or equal to its
5 regulatory action level RBC but less than its company action level RBC; or

6 (b) If a life and health insurer, the insurer has total adjusted capital
7 which is greater than or equal to its company action level RBC but less than the
8 product of its authorized control level capital and 2.5, and has a negative trend;

9 (c) **If a property and casualty insurer, the insurer has total**
10 **adjusted capital which is greater than or equal to its Company Action**
11 **Level RBC but less than the product of its Authorized Control Level**
12 **RBC and 3.0 and triggers the trend test determined in accordance with**

13 **the trend test calculation included in the Property and Casualty RBC**
14 **report instructions;**

15 (2) The notification by the director to the insurer of an adjusted RBC
16 report that indicates the event in paragraph (a) [or], (b), **or (c)** of subdivision (1)
17 of this subsection, if the insurer does not challenge the adjusted RBC report
18 pursuant to section 375.1265;

19 (3) If pursuant to section 375.1265 the insurer challenges an adjusted
20 RBC report that indicates the event described in subdivision (1) of this
21 subsection, the notification by the director to the insurer that the director has,
22 after a hearing, rejected the insurer's challenge.

23 2. In the event of a company action level event the insurer shall prepare
24 and submit to the director an RBC plan which shall:

25 (1) Identify the conditions in the insurer which contribute to the company
26 action level event;

27 (2) Contain proposals of corrective actions which the insurer intends to
28 take and would be expected to result in the elimination of the company action
29 level event;

30 (3) Provide projections of the insurer's financial results in the current
31 year and at least the four succeeding years, both in the absence of proposed
32 corrective actions and giving effect to the proposed corrective actions, including
33 projections of statutory operating income, net income, capital or surplus. The
34 projections for both new and renewal business might include separate projections
35 for each major line of business and separately identify each significant income,
36 expense and benefit component;

37 (4) Identify the key assumptions impacting the insurer's projections and
38 the sensitivity of the projections to the assumptions; and

39 (5) Identify the quality of, and problems associated with, the insurer's
40 business, including but not limited to its assets, anticipated business growth and
41 associated surplus strain, extraordinary exposure to risk, mix of business and use
42 of reinsurance in each case, if any.

43 3. The RBC plan shall be submitted:

44 (1) Within forty-five days of the company action level event; or

45 (2) If the insurer challenges an adjusted RBC report pursuant to section
46 375.1265 within forty-five days after notification to the insurer that the director
47 has, after a hearing, rejected the insurer's challenge.

48 4. Within sixty days after the submission by an insurer of an RBC plan

49 to the director, the director shall notify the insurer whether the RBC plan shall
50 be implemented or is, in the judgment of the director, unsatisfactory. If the
51 director determines the RBC plan is unsatisfactory, the notification to the insurer
52 shall set forth the reasons for the determination, and may set forth proposed
53 revisions which will render the RBC plan satisfactory, in the judgment of the
54 director. Upon notification from the director, the insurer shall prepare a revised
55 RBC plan, which may incorporate by reference any revisions proposed by the
56 director, and shall submit the revised RBC plan to the director:

- 57 (1) Within forty-five days after the notification from the director; or
58 (2) If the insurer challenges the notification from the director pursuant
59 to section 375.1265, within forty-five days after a notification to the insurer that
60 the director has, after a hearing, rejected the insurer's challenge.

61 5. In the event of a notification by the director to an insurer that the
62 insurer's RBC plan or revised RBC plan is unsatisfactory, the director may at the
63 director's discretion, subject to the insurer's right to a hearing under section
64 375.1265, specify in the notification that the notification constitutes a regulatory
65 action level event.

66 6. Every domestic insurer that files an RBC plan or revised RBC plan
67 with the director shall file a copy of the RBC plan or revised RBC plan with the
68 chief insurance regulatory official in any state in which the insurer is authorized
69 to do business if:

70 (1) Such state has an RBC provision, substantially similar to subsection
71 1 of section 375.1267; and

72 (2) The chief insurance regulatory official of that state has notified the
73 insurer of its request for the filing in writing, in which case the insurer shall file
74 a copy of the RBC plan or revised RBC plan in that state no later than the later
75 of:

76 (a) Fifteen days after the receipt of notice to file a copy of its RBC plan
77 or revised RBC plan with the state; or

78 (b) The date on which the RBC plan or revised RBC plan is filed under
79 subsection 3 or 4 of this section.

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